



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2022-0728; FRL-10255-02-R5]**

**Air Plan Approval; Michigan; Part 4 Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to Michigan's State Implementation Plan (SIP). The Michigan Department of Environment, Great Lakes, and Energy (EGLE) submitted on August 17, 2022, changes to Michigan's Air Pollution Control Rules, Emissions Limitations and Prohibitions - Sulfur Bearing Compounds. The revision includes administrative changes to existing rules and updates to material adopted by reference.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2022-0728. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Charles Hatten at (312) 886-6031 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

**I. What is being addressed in this document?**

This revision approves EGLE's August 17, 2022, submission to Michigan's Air Pollution Control Rules in Chapter 336, Part 4. The revision includes administrative changes to existing rules and updates to material adopted by reference. A detailed analysis of the revision, and EPA's reasons for approval are provided in EPA's notice of proposed rulemaking (NPRM), dated January 13, 2023 (88 FR 2303), and will not be restated here.

**II. What comments did we receive on the proposed rule?**

EPA provided a 30-day review and comment period in the

NPRM. The comment period ended on February 13, 2023. We received no comments on the proposed rule.

### **III. What action is EPA taking?**

EPA is approving the revision to Part 4 as submitted on August 17, 2022, into the Michigan SIP. Specifically, EPA is approving revision to Michigan rule R336.1401a "Definitions"; R336.1401 "Emission of sulfur dioxide from power plants"; R336.1402 "Emission of SO<sub>2</sub> from fuel-burning equipment at a stationary source other than power plants"; and R336.1404 "Emission of SO<sub>2</sub> and sulfuric acid mist from sulfuric acid plants", effective October 24, 2019.

### **IV. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations addressing SO<sub>2</sub> emissions, as described in section III of this preamble and set forth in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act (CAA) as of the

effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines

environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

EGLE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2023.

Debra Shore,  
*Regional Administrator, Region 5.*

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (c) is amended by

revising the entries for R336.1401a, R336.1401, R336.1402, and R336.1404 under the heading "Part 4. Emission Limitations and Prohibitions—Sulfur Bearing Compounds" to read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA -APPROVED MICHIGAN REGULATIONS**

| Michigan citation                                                             | Title                                                                                                  | State effective date | EPA approval date                                                                        | Comments |
|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|----------------------|------------------------------------------------------------------------------------------|----------|
| * * * * *                                                                     |                                                                                                        |                      |                                                                                          |          |
| <b>Part 4. Emission Limitations and Prohibitions—Sulfur Bearing Compounds</b> |                                                                                                        |                      |                                                                                          |          |
| R 336.1401                                                                    | Emission of sulfur dioxide from power plants                                                           | 10/24/2019           | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] |          |
| R 336.1401a                                                                   | Definitions                                                                                            | 10/24/2019           | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] |          |
| R 336.1402                                                                    | Emission of SO <sub>2</sub> from fuel-burning equipment at a stationary source other than power plants | 10/24/2019           | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] |          |
| * * * * *                                                                     |                                                                                                        |                      |                                                                                          |          |
| R 336.1404                                                                    | Emission of SO <sub>2</sub> and sulfuric acid mist from sulfuric acid plants                           | 10/24/2019           | [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION] |          |
| * * * * *                                                                     |                                                                                                        |                      |                                                                                          |          |

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